
HOUSE BILL No. 1751

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-5-6.

Synopsis: Employee review of personnel records. Provides that, upon written request from an employee, an employer shall provide the employee with an opportunity to review the employee's personnel records on a periodic basis, with certain exceptions. Provides a procedure to follow if the employee disagrees with the information contained in the personnel record. Provides that a court shall award damages to the employee if the employer violates any of these provisions.

Effective: July 1, 2003.

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January 21, 2003, read first time and referred to Committee on Labor and Employment.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1751

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 6. Employee's Access to Personnel Records**

5 **Sec. 1. As used in this chapter, "employee" means an individual:**

- 6 (1) employed by;
7 (2) permitted to work by;
8 (3) who performs a service for remuneration for; or
9 (4) who is under any contract of hire, written or oral, express
10 or implied, with;

11 **an employer in any occupation.**

12 **Sec. 2. As used in this chapter, "employer" means:**

- 13 (1) an individual;
14 (2) a partnership;
15 (3) an association;
16 (4) a limited liability company;
17 (5) a corporation;



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1 (6) a business trust;
 2 (7) the state; or
 3 (8) a governmental agency or political subdivision;
 4 with at least four (4) employees at the same time.

5 Sec. 3. As used in this chapter, "personnel record" means a
 6 record kept by an employer that identifies the employee, to the
 7 extent that:

8 (1) the record:

9 (A) is used;

10 (B) has been used; or

11 (C) may be used;

12 to determine the employee's qualifications for employment,
 13 promotion, transfer, additional compensation, or disciplinary
 14 action; or

15 (2) the record may affect the determination described in
 16 subdivision (1).

17 Sec. 4. For the purposes of this chapter, a personnel record
 18 includes a record in the possession of:

19 (1) a person;

20 (2) a corporation;

21 (3) a partnership; or

22 (4) another association that has a contractual agreement with
 23 the employer to keep or supply a personnel record as
 24 provided in this article.

25 Sec. 5. For purposes of this chapter, a personnel record does not
 26 include any of the following:

27 (1) Employee references supplied to an employer if the
 28 identity of the person making the reference would be
 29 disclosed.

30 (2) Materials relating to the employer's staff planning with
 31 respect to more than one (1) employee, including salary
 32 increases, management bonus plans, promotions, and job
 33 assignments.

34 (3) Medical reports and records made or obtained by the
 35 employer if the records or reports are available to the
 36 employee from the doctor or medical facility involved.

37 (4) Information of a personal nature about a person other
 38 than the employee if disclosure of the information would
 39 constitute a clearly unwarranted invasion of the other
 40 person's privacy.

41 (5) Records limited to grievance investigations that are kept
 42 separately and that are not used for the purposes provided in

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1 this chapter.

2 (6) Records maintained by an educational institution that are
3 directly related to a student and that are considered to be
4 education records under the Family Educational Rights and
5 Privacy Act of 1974, 20 U.S.C. 1232g.

6 (7) Records kept by an executive, an administrative, or a
7 professional employee that are kept in the sole possession of
8 the maker of the record and that are not accessible or shared
9 with other persons. However, a record concerning an
10 occurrence or fact about an employee kept under this
11 subdivision may be entered into a personnel record if entered
12 not more than six (6) months after the date of the occurrence
13 or the date the fact becomes known.

14 Sec. 6. (a) Upon written request that describes the personnel
15 record, an employer shall provide the employee with an
16 opportunity to periodically review:

17 (1) at reasonable intervals; and

18 (2) not more than two (2) times in a calendar year or as
19 otherwise provided by law or a collective bargaining
20 agreement;

21 the employee's personnel record if the employer has a personnel
22 record for that employee.

23 (b) The review must take place at a location reasonably near the
24 employee's place of employment and during normally scheduled
25 hours of employment for the employee.

26 (c) If an employee demonstrates that the employee is unable to
27 review the personnel record at the employing unit or at a location
28 reasonably near the employee's place of employment and during
29 normal office hours, the employer shall mail a copy of the
30 requested record to the employee upon the employee's written
31 request.

32 Sec. 7. (a) As part of or after the review provided in section 6 of
33 this chapter, an employee may obtain a copy of the information or
34 part of the information contained in the employee's personnel
35 record.

36 (b) The employer may charge a fee for a copy provided under
37 this section.

38 (c) The fee shall be limited to the actual cost of duplicating the
39 information.

40 Sec. 8. (a) If there is a disagreement concerning information
41 contained in a personnel record:

42 (1) removal; or

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(2) correction;
of that information may be mutually agreed upon by the employer
and the employee.

(b) If an agreement is not reached under subsection (a), the
employee may submit a written statement explaining the
employee's position. The statement may not exceed five (5) sheets
of eight and one-half (8 1/2) by eleven (11) inch paper. If the
information over which there is a disagreement is included in the
employee's personnel record, the statement shall be included with
information contained in the personnel record if the information
is divulged to a third party.

(c) If either the employer or employee knowingly places or
causes to be placed in the personnel record false information, the
employer or employee, whichever is appropriate, has a remedy
through legal action to have that information expunged.

Sec. 9. This chapter may not be construed to diminish a right of
access to records as provided in IC 5-14-3 or as otherwise provided
by law.

Sec. 10. If an employer violates this chapter, an employee may
commence an action in a circuit or superior court to compel
compliance with this chapter. A court with jurisdiction in:

- (1) the county in which the employee resides;
 - (2) the county in which the employee is employed; or
 - (3) the county in which the personnel record is maintained;
- has jurisdiction to hear the matter.

Sec. 11. The court shall award an employee prevailing in an
action under this chapter the following:

- (1) For a violation of this chapter, actual damages plus costs.
- (2) For a willful and knowing violation of this chapter, an
amount equal to the weekly pay of the employee, computed at
the usual and customary rate of pay and the usual and
customary hours worked per week, plus costs, reasonable
attorney's fees, and actual damages.

In an action under this chapter, failure to comply with an order of
the court may be punished as contempt of court.

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